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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,773	10/22/2003	Guilhem Rousselet	LOREAL 3.0-036	6962

530 7590 03/22/2007
LERNER, DAVID, LITTENBERG,
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EXAMINER

RUNNING, RACHEL A

ART UNIT	PAPER NUMBER
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3732

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/22/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/690,773

Applicant(s)

ROUSSELET, GUILHEM

Examiner

Rachel A. Running

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,8-16 and 19-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,8-16 and 19-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 8, 2006 has been entered.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 26 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Poupitch (U.S. Patent No. 3,924,738).

Poupitch discloses a first item in the form of a receptacle (20) containing a first product, and a second item in the form of a receptacle containing a second product (see Figure 4; column 3, lines 12-15). A device having a first element (18) and a second element (18) holds the first and second items in a fixed relation to one another by the device (see Figure 4; column 2, lines 55-65). The first and second elements can attach

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to either the first item or the second item such that the first and second items may be adjacent to one another without substantially deforming the first and second items. (see Figure 4). The first and second items each have a circular cross-section (see Figure 1).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 8-12, and 19-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poupitch (U.S. Patent No. 3,924,738) in view of Edwards (U.S. Patent No. 2,949,204).

Poupitch discloses the claimed invention except for the connecting element permitting the first side of the first element to confront the first side of the second element and the second side of the first element to confront the second side of the second element.

Edwards teaches a connecting element that allows the connecting element (58) to permit the first side of the first element to confront the first side of the second element and the second side of the first element to confront the second side of the second element (see Figures 1-8). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the connecting element of Poupitch

with a completely flexible element as taught by Edwards to allow the user the ability to pick up the device at the flexible element using their fingers.

5. Claims 2-5 and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poupitch in view of Edwards as applied to claims 1 and 12 above, and further in view of Pezzoli et al. (U.S. Patent 5,191,975).

The combination of Poupitch and Edwards disclose the claimed invention except for the first element having a first open end and second element having a second open end, wherein the first and second open ends are flexible (claims 2 and 13), the first and second open ends include a pair of deformable arms (claims 3 and 14), the pair of deformable arms form a portion of a circle and the pair of deformable arms extend more than 180 degrees from one another as measured from the connecting element opposite the open ends (claims 4 and 15), and the pair of deformable arms extend between 190-310 degrees from one another as measured from said connecting element opposite said open ends (claims 5 and 16).

Pezzoli et al. teach a first element with a first open end (56) having a first length and a second element having a second open end (56) having a second length, the first and second open ends are flexible (see Figure 1; column 4, lines 5-10). The first and second open ends include a pair of deformable arms (32) (see Figure 1). The pair of deformable arms forms a portion of a circle and extends more than 190-310 degrees from one another as measured from the connecting element opposite the open ends (see Figure 1). It would have been obvious to one having ordinary skill in the art at the

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time the invention was made to have the first element and second element of the combination of Poupitch and Edwards be a pair of deformable arms as taught by Pezzoli et al. in order to facilitate securing the first and second items in the first and second elements.

6. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Poupitch.

Poupitch discloses the claimed invention except for the first product being make-up for the lips or eyelashes and the second product being a product that modifies the appearance of the first product. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the first product be make-up for the lips or eyelashes and the second product be a product that modifies the appearance of the first product since Poupitch does not specify what product is to be used with the containers, therefore, one having ordinary skill in the art would determine that any product desired by the user can be placed in the containers such as eye or lip make-up and eye or lip modifier.

Response to Arguments

7. Applicant's arguments filed January 8, 2007 have been fully considered but they are not persuasive.

8. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the containers have different products therein) are not recited in the rejected

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claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The claim only specifies the first and second products in the containers. Further applicant argues that one of the products is an accessory to the first product to help to aid in applying the first product. However, claim 26 states on line 6, "a second product or an accessory for the application of said first product" (emphasis by examiner).

9. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine Edwards and Poupitch is that Edwards teaches using the flexible member to

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allow the user the ability to pick up the device at the flexible element using only their fingers.

Conclusion

10. This is a request for continued examination of applicant's earlier Application No. 10/690,773. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rachel A. Running whose telephone number is (571)

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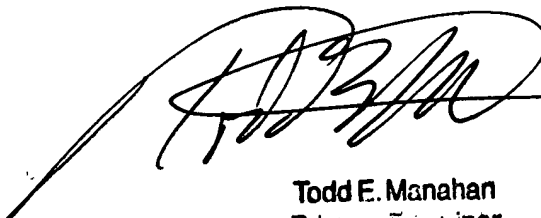
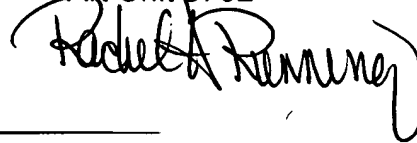
272-1917. The examiner can normally be reached on Monday-Friday 7:00 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Rachel A. Running
Examiner

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Todd E. Manahan
Primary Examiner